S.B.Civil Revision Petition No.597/2005

LRs. of Indermal
vs.
Shri Gopal.

Date : 4.4.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. R Chauhan, for the petitioners.
Mr. BN Kalla, for the respondent.

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Heard learned counsel for the parties.

The present revision petition has been filed to challenge the judgment and decree of the trial court dated 30.4.2005 on the grounds firstly that the decree sheet has not been prepared by the trial court and secondly the petitioners/plaintiff are aggrieved against the order passed in the judgment of the trial court in para no.17 whereby the trial court directed that on payment of stamp duty along with penalty on Ex.1, the decree sheet be prepared, therefore, the petitioners are aggrieved against the order and not against the judgment which is in favour of the petitioners.

Learned counsel for the respondent pointed out that the trial court in civil original suit passed the decree on 30.4.2005 and the direction given in para no.17 of the order of payment of stamp duty and penalty thereon for Ex.1 is part and parcel of the decree and not an order. Even if it is an order, it can be challenged by preferring regular first appeal under Section 96 CPC.

I considered the submissions of learned counsel for the parties.

The decree was passed by the trial court on 30.4.2005 in civil original suit filed by the plaintiff. Whether the decree passed by the trial court is appealable or not is not dependent upon drawing of decree. Drawing of decree is subsequent to passing of the judgment and once the judgment falls in the definition of the decree then irrespective of the fact that the decree sheet has been drawn or not, it can be challenged by filing appeal against the judgment as decree.

The direction of the trial court for preparation of decree sheet on payment of stamp duty and penalty is inseparable part of the decree and not an order.

In view of the above, the present revision petition is not maintainable and is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya